

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

TAMMY GRAHAM,

Plaintiff,

v.

**FOREVER YOUNG OREGON, LLC., an
Oregon corporation; RONALD ZEMP; and
JENNIFER ZEMP,**

Defendants.

Case No. 3:13-cv-01962-HU

ORDER

Michael H. Simon, District Judge.

United States Magistrate Judge Dennis James Hubel issued Findings and Recommendation in this case on August 19, 2014. Dkt. 28. Judge Hubel recommended that Ms. Graham's ("Graham") motion for default judgment be granted. No party has filed objections.

Under the Federal Magistrates Act ("Act"), the court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C.

§ 636(b)(1)(C). If a party files objections to a magistrate's findings and recommendations, "the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.*; Fed. R. Civ. P. 72(b)(3).

If no party objects, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) (“There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate’s report to which no objections are filed.”). The Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the court review the magistrate’s findings and recommendations for “clear error on the face of the record.”

The general rule, however, is that “default judgments are ordinarily disfavored,” and whether to grant a judgment by default is within the discretion of the district court. *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986). Accordingly, the Court has reviewed Judge Hubel’s Findings and Recommendation *de novo*. *Cf. Thomas*, 474 U.S. at 154 (observing that the Act does not “preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard”).

The Court agrees with Judge Hubel’s analysis. Judge Hubel properly scrutinized Graham’s calculations of her unpaid overtime wages, FLSA liquidated damages, Oregon penalty wages, and post-judgment interest, and found that they were reasonable and accurate. Judge Hubel also properly analyzed Graham’s application for attorney’s fees and costs under the Ninth Circuit’s twelve-factor test, *see Kerr v. Screen Extra Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1988), and found that they should be granted. Accordingly, the Court **ADOPTS** Judge Hubel’s Findings and Recommendation (Dkt. 28). Graham’s motions for default judgment (Dkt. 17) and attorney’s fees (Dkt. 19) are GRANTED.

IT IS SO ORDERED.

DATED this 10th day of September, 2014.

/s/ Michael H. Simon

Michael H. Simon
United States District Judge